

REMARKS

The Examiner has objected to Claims 1, 3-7, 9, 12-14, 16-20, 22, 25-31, and 33-43 due to informalities. More specifically, the Examiner has argued that “the ‘capable [of]’ language raises a question as to whether the intended steps are positively recited or if they are intended for future use.” Applicant respectfully asserts that such rejection has been avoided by virtue of the amendments made hereinabove to at least some of the aforementioned claims.

Additionally, the Examiner has rejected Claims 1, 3, 6-7, 12-14, 16-20, 25-31, 34, and 38-40 under 35 U.S.C. 103(a) as being unpatentable over Krishnan et al. (U.S. Patent No. 6,075,863), in view of Chi (U.S. Patent No. 6,006,329). The Examiner has also rejected Claim 42 under 35 U.S.C. 103(a) as being unpatentable over Krishnan, in view of Chi, in view of Makinson (U.S. Patent No. 7,023,861), and in further view of Lerche et al. (U.S. Patent No. 5,511,163). Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove to the independent claims. Specifically, applicant has amended the independent claims to at least substantially incorporate the subject matter of dependent Claim 42.

With respect to the independent claims, applicant has at least substantially incorporated the subject matter of former Claim 42 into the independent claims, as follows:

“wherein a predetermined amount of the received packets are assembled for determining whether the received packets are of interest, the received packets including packets received at the network adapter” (see this or similar, but not necessarily identical language in each of the independent claims).

With respect to the subject matter of former Claim 42 (now at least substantially incorporated into the independent claims), the Examiner has relied on the Abstract as well as Col. 1, lines 38-49 from the Lerche reference to make a prior art showing of

applicant's claimed technique "wherein a predetermined amount of the received packets are assembled for determining whether the received packets are of interest." In particular, the Examiner has argued that such excerpts from Lerche disclose "that a predetermined amount of packets (i.e. all packets) are assembled into one file and then determined if they are of interest by scanning them for detection of virae."

Applicant respectfully disagrees and notes that the above reference excerpts relied on by the Examiner merely disclose "a network adapter which is able to receive all information on the network" and which "is connected to a computer which together with the adaptor can perform an assembling and scanning of substantially all files on the network and carry out a recognition of virus signatures" (Abstract). Additionally, the excerpts teach "catch[ing] and scan[ning] all files on the network," where "the file packets circulating in the ring network are assembled in one file" and that "[a]fter the assembling in one file, the packets are scanned for detection of virae" (Col. 1, lines 41-46 – emphasis added).

However, merely disclosing that a network adapter can catch and scan all files on a network, and that the file packets in the network are assembled in one file and scanned, as in Lerche, fails to disclose a technique "wherein a predetermined amount of the received packets are assembled for determining whether the received packets are of interest," especially where "the received packets [include] packets received at the network adapter" (emphasis added), as presently claimed by applicant.

For example, as noted above, the Lerche reference only discloses a network adapter that is able to receive all information on the network and which can perform a scanning of substantially all files on the network. Applicant, however, claims that it is "the processor [that] determines whether received packets are of interest" (see this or similar, but not necessarily identical language in each of independent Claims 1, 14, 27 and 29) or "the logic [that] determines whether received packets are of interest" (see Claim 28) where "a predetermined amount of the received packets are assembled for determining whether the received packets are of interest, the received packets including

packets received at the network adapter” (emphasis added), in the context claimed (see this or similar, but not necessarily identical language in each of the independent claims).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art excerpts, as relied upon by the Examiner, fail to teach or suggest all of the claim limitations, as noted above.

Applicant further notes that the prior art is also deficient with respect to the dependent claims. For example, with respect to Claim 6 et al., the Examiner has relied on Col. 5, lines 16-32 in Krishnan to make a prior art showing of applicant’s claimed technique “wherein the manner in which the scanning is performed is user-configured” (as amended).

Applicant respectfully asserts that the above reference excerpt relied on by the Examiner only generally discloses that “applets may be used to scan incoming data for potentially hazardous programs,” and that an “applet may prioritize incoming messages based on a user specified criteria.” However, only generally disclosing scanning incoming data does not meet applicant’s claimed technique “wherein the manner in which the scanning is performed is user-configured” (emphasis added), as claimed. Further, disclosing prioritizing incoming messages based on a user specified criteria, as in

Krishnan, fails to even suggest that “the manner in which the scanning is performed is user-configured” (emphasis added), as claimed.

In the Office Action dated 03/25/2008, the Examiner has failed to respond to applicant’s above arguments with respect to applicant’s claimed technique “wherein the manner in which the scanning is performed is user-configured” (emphasis added), as claimed. Thus, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

In addition, with respect to Claim 30, the Examiner has relied on Col. 5, lines 24-30 from the Krishnan reference to make a prior art showing of applicant’s claimed technique “wherein the content scanning enforces operational policies of an organization.”

Applicant respectfully notes that the above reference excerpt relied on by the Examiner merely discloses that “an applet may provide filtering of ‘junk e-mail’ or other unwanted data” and that “an applet may prioritize incoming messages based on a user specified criteria, arranging to deliver the most urgent message first” (Col.5, lines 24-30).

However, merely filtering junk email, in addition to prioritizing incoming messages based on user criteria, does not teach a technique “wherein the content scanning enforces operational policies of an organization” (emphasis added), as claimed by applicant.

In the Office Action dated 03/25/2008, the Examiner has argued that “in the specification, operational policies of an organization can be detecting harassing or pornographic content, junk emails, viruses, etc. (see Specification page 9, lines 7-10).” Additionally, the Examiner has argued that “Krishnan shows an applet providing filtering of junk e-mail and other unwanted data (see column 5, lines 25-30) and scanning for

viruses (see column 5, lines 16-20)” and that “[i]t is believed that this teaching is enough evidence to support the enforcement of operational policies.”

Applicant respectfully disagrees. First, applicant respectfully points out that applicant’s claim language is not limited to “detecting harassing or pornographic content, junk emails, [and] viruses,” but instead discloses a technique “wherein the content scanning enforces operational policies of an organization” (emphasis added), as claimed.

Further, applicant again notes that the excerpts relied on by the Examiner merely disclose that “an applet may provide filtering of ‘junk e-mail’ or other unwanted data” and that “an applet may prioritize incoming messages based on a user specified criteria, arranging to deliver the most urgent message first” (Col.5, lines 24-30 – emphasis added). Further still, the excerpts disclose that “applets may be used to scan incoming data for potentially hazardous programs, such as virus, worm, or Trojan horse programs” (Col. 5, lines 16-18 – emphasis added).

However, merely disclosing that an applet may filter junk email or other unwanted data, prioritize incoming messages, or scan data for potentially hazardous programs, as in Krishnan, does not disclose a technique “wherein the content scanning enforces operational policies of an organization” (emphasis added), as claimed by applicant. Nowhere in the above excerpts does “the content scanning enforc[e] operational policies of an organization” (emphasis added), as specifically claimed.

Since at least the third element of the *prima facie* case of obviousness has not been met, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

Still yet, applicant brings to the Examiner’s attention the subject matter of new Claims 44-46 below, which are added for full consideration:

“wherein the packet assembly module utilizes header information associated with received packets for assembling data fields of the received packets” (see Claim 44);

“wherein if the received packets that are of interest fail the scanning, an alert is displayed which provides remedy options” (see Claim 45); and

“wherein scanning the received packets that are of interest is prioritized based on a file type associated with the received packets” (see Claim 46).

Again, a notice of allowance or a proper prior art showing of all of applicant’s claim limitations, in combination with the remaining claim elements, is respectfully requested.

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAIIP056).

Respectfully submitted,
Zilka-Kotab, PC

/KEVINZILKA/

Kevin J. Zilka
Registration No. 41,429

P.O. Box 721120
San Jose, CA 95172-1120
408-505-5100